IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 2724 of 2006

HANUMAN SINGH
V/S
DISTRICT & SESSION JUDGE,MERTA CITY

Mr. SN TRIVEDI, for the appellant / petitioner

Date of Order : 26.5.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

The petitioner by this petition seeks to have quashed the notice dt. 14.11.2005 Annexure-7, and charge sheet dt. 9.3.2006 Annexure-8, so also wants a writ of prohibition, prohibiting the respondents from proceeding with the departmental enquiry.

The case of the petitioner is, that he was appointed as L.D.C. in the Court of learned Civil Judge (Jr. Division) and Judicial Magistrate, Ist Class, Kuchaman City. While so working a criminal case, for the offence under Section 465 I.P.C., was registered against him in the year 1981. Thereupon a departmental enquiry was conducted against him, in which the statement of the witnesses were recorded, in connection with the criminal case. Thereafter his services were terminated, vide order dt. 7.8.1981, on

the ground, of work and conduct, having not been found to be satisfactory, and by treating the petitioner to be on probation. Aggrieved the petitioner filed a writ petition No. 1774/1981, which came to be allowed on 29.1.1991, and the termination was set aside. This judgment has been produced as Annexure-2. Against this judgment Annexure-2, D.B. Civil Special Appeal was filed, which was also dismissed vide order dt. 20.4.1993. Then, a review petition was also dismissed vide order Annexure-4. As such the petitioner is working as L.D.C.

It is then alleged, that a criminal case was instituted against the petitioner in the court of learned Addl. Chief Judicial Magistrate, Parbatsar, being Criminal Case No. 544/1981, wherein it was found, that in admission form of one Manohar Singh, he used the rubber stamp which was not intended to be used as hire object, and the petitioner was given benefit of Section 4 of the Probation of Offenders Act, (hereinafter to be referred to as the 'Probation Act') and it was further held, that according to Section 12 of the Probation Act, the government service of the petitioner will not be adversely affected. Copy of this judgment has been produced as Annexure-5. Against this conviction, the petitioner filed appeal, but then the judgment was affirmed vide judgment dt. 12.7.2004, produced here as Annexure-6. It is in this sequence, that thereafter the petitioner was served with a notice Annexure-7,

alleging that while working as L.D.C. in the Court of Munsif and Judicial Magistrate, Nawa, for the purpose of procuring admission of One Mahendra Singh s/o Shri Dheer Singh, the petitioner forged the signature of the Presiding Officer, and fraudulently used the seal, for which he was prosecuted in the Criminal Case No. 635/85 (544/81), and wherein he has been found guilty for the offence under Section 465 I.P.C., which conviction was affirmed in appeal, and a revision filed against that order in the High Court was also dismissed as not pressed. It was then alleged that thus the petitioner has procured forged document, and put initial and seal of the Court, and thus committed forgery, therefore, he was called upon to show cause as to why the disciplinary proceedings under Rule 16 of the C.C.A. Rules be not initiated against him. This being dt. 14.11.2005 has been produced as Annexure-7. Thereafter the petitioner was served with a charge sheet dt. 9.3.2006, being Annexure-8, which is precisely under challenge.

Arguing the writ petition it was contended, that since the petitioner was earlier terminated on the ground of this very delinquency, which termination had been set aside by this Court, it is not open to the respondents to now initiate disciplinary proceedings afresh. The other submission made is, that after criminal case has been decided with a specific direction, that this conviction

will not adversely affect the government service of the petitioner, according to Section 12 of the Probation of Offenders Act, it is not open to the respondents to initiate departmental enquiry, now vide Annexure-8. Reliance in this regard is placed on the judgment of Hon'ble the Supreme Court, in M. Paul Anthony Vs. Bharat Gold Mines Ltd., reported in AIR 1999 SC-1416.

I have considered the submissions. So far as the previous termination is concerned, during course of argument, learned counsel for the petitioner admitted, that the previous termination was not by way of any punishment, by holding any departmental enquiry for the delinquency, rather he was terminated treating him to be on probation. In my view, a look at Annexure-1 and 2 together would show, that the controversy raised before this Court in the Writ Petition No. 1774/1981 was, only to the effect, that the petitioner's services have been brought to an end, treating him to be probationer, while as a matter of fact his probation had come to an end long back, and services could be terminated only before completion of the period of probation, that having not been done, he could not be terminated, in the manner done, and precisely on this ground alone, the termination order was set aside, which was upheld.

Obviously, the delinquency of the petitioner had

not been a subject matter of enquiry, nor any conclusions had been drawn on that count, whether finding the petitioner guilty, or not guilty. In that view of the matter, it cannot be said, that on account of petitioner having earlier been terminated vide Annexure-1, and that termination having been set aside vide Annexure-2, the respondents are disentitled from issuing the charge sheet Annexure-8.

Now, I may take up the contention about impermissibility of issuance of charge sheet on the face of judgment Annexure-5, in view of the judgment of Hon'ble the Supreme Court, in Bharat Gold Mine's case. The contention raised was, that in Bharat Gold Mine's case, it was held, that findings recorded by the enquiry officer indicate, that the charges framed against the officer were sought to be proved by the police officers, and Panch witnesses, who had raided the house, and had effected the recovery. They were the only witnesses examined in the enquiry, on the basis of which the charges were found to be established, and the same witnesses were examined in criminal case, but the Court on consideration of that evidence had thrown away the entire prosecution case, acquitting the officer, and therefore, it was held, that when the appellant is acquitted by the judicial pronouncement, with the finding, that the “raid and recovery” were not proved, it would be unjust, unfair, and rather oppressive, to allow the

findings, recorded by "exparte departmental proceedings" to stand, and therefore, it is contended that the charge sheet could not be made.

In my view, the contention cannot be accepted. It is significant to note, that in this case the departmental enquiry was not set aside on the ground of the delinquent officer having been acquitted in criminal case, rather validity of the departmental proceedings was examined independently, on its own merits, and in para-33, it was found, that the employee was not provided any subsistence allowance during the period of suspension, and the adjournment prayed for by him on account of his illness, duly supported by medical certificates, was refused, resulting in the enquiry proceeding exparte. It was also found, that the officer has been punished "in total violation of the principles of natural justice and he was literally not afforded any opportunity of hearing". Interalia with these findings, the enquiry proceedings were found to be vitiated, and in that sequence, it was observed, that it would be oppressive, to allow the findings recorded at the exparte departmental proceedings to stand. Thus, the predominant consideration weighing with Hon'ble the Supreme Court was, that the enquiry was exparte, and was in violation of principles of natural justice. Then, examining the question of permitting the department to hold the enquiry afresh, it was found, that

since the delinquent had undergone agony for the last 14 years, and had been acquitted by the Criminal Court, the Department cannot be directed to institute a fresh enquiry against him, on the same set of facts, and therefore, he was directed to be reinstated. Therefore, this judgment is of no assistance to the petitioner, as it does not lay down any absolute proposition of law, to the effect, that where the person concerned is acquitted in criminal case, he cannot be proceeded against departmentally.

On the other hand, I find sufficient authority, in the latest judgments of Hon'ble the Supreme Court, being those in, Chairman & Managing Director, U.C.O. Bank Vs. P.C. Kakkar, reported in (2003) 4 SCC-364, and Commissioner of Police, Delhi Vs. Narender Singh, reported in 2006 AIR SCW-1958.

In P.C. Kakkar's case the officer concerned was acquitted by the Criminal Court, of the offences of embezzlement, and was punished departmentally, and considering permissibility of proceeding departmentally, it was held in para-15 as under:-

> "Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in the criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be a circumstance to

> be considered while awarding punishment. It would depend upon the facts of each case and even that cannot have universal application."

Then, Narendra Singh's case is still more telling, inasmuch as, in that case, the delinquent was prosecuted for the offence under Section 308/34 I.P.C., and the two persons, who were accused therein, made confession, stating that the respondent had committed theft of the said revolver and pistol. On the basis of their said confessional statement, he was arrested. While in police custody he also made confession regarding his involvement in the said offence, and identified the place, wherefrom he committed the theft of two revolvers and one pistol, with some of his colleagues. In the criminal case, in view of the fact, that apart from the confession of the accused there was no material on record, the respondent was discharged. However, in the meantime he was dismissed without holding any enquiry, and that dismissal was upheld in appeal, and on being challenged in Tribunal, it was set aside, on the ground, that the Department failed to establish sufficient grounds to dismiss, without holding disciplinary proceedings. That was challenged by way of writ petition by the Department, which writ was also dismissed. Thereupon regular disciplinary proceedings were initiated, and charge sheet was served, wherein the respondent was found guilty, and was punished with dismissal from service. In this enquiry the confession made

to the police was relied upon. Appeal against that dismissal was dismissed. The Tribunal set aside the order of dismissal, holding that the confession made during the course of investigation does not relate to the recovery. The writ petition against this order was dismissed in limine, and when the matter was taken to the Hon'ble the Supreme Court, Hon'ble the Supreme Court reversing these orders, held, that the standards of proof required in recording a finding of conviction in a criminal case, and in a departmental proceeding, are distinct and different. In criminal case, it is essential to prove a charge beyond all reasonable doubt, while in a departmental proceeding, preponderance of probability would serve the purpose. For this proposition the earlier judgment of Hon'ble the Supreme Court, in Kamaladevi Agarwal Vs. State of West Bengal, reported in (2002) 1 SCC-555, was relied upon. Then, in paras-13 and 14 it was held as under:-

> "13. It is now well-settled by reason of a catena of decisions of this Court that if an employee has been acquitted of a criminal charge, the same by itself would not be a ground not to initiate a departmental proceeding against him or to drop the same in the event an order of acquittal is passed.
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> 14. In Manager, Reserve Bank of India, Bangalore Vs. S. Mani and others (2005) 5 SCC 100, this Court held:
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> > "It is trite that a judgment of acquittal passed in favour of the employees by giving benefit of doubt per se would not be binding upon the employer....."

Then, examining the scope of Section 25 of the Evidence Act, in paras 26, 27 and 28 it was held as under:-

> 26. It is now well-settled that the provisions of the Evidence Act are not applicable in a departmental proceeding.
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> 27. In State of Andhra Pradesh and others vs. Chitra Venkata Rao [(1975) 2 SCC 557], this Court held:
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> > "The High Court was not correct in holding that the domestic enquiry before the Tribunal was the same as prosecution in a criminal case."
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> 28. It was further held:
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> > "The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. vs. S. Sree Rama Rao. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or

> in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole Judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226."

And then holding that Section 25 and Section 26 of the Evidence Act are not attracted, the confession was found to be admissible in the departmental proceedings, the orders of the Tribunal, and the High Court were set aside.

Thus, this contention cannot be accepted, that since the petitioner has been acquitted, he could not be proceeded against departmentally.

Apart from the above legal position, the present case stands on yet different footing. For appreciating this, I may gainfully quote the provisions of Section 4 and 12 of the Probation Act, and Rule 19 of the Rajasthan Civil Services (C.C.A.) Rules which read as under:-

> "4. Power of court to release certain offenders on probation of good conduct-

(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour;

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such

order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forth with furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned."

"12. Removal of disqualification attaching to conviction- Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person who, after his release under Section 4, is subsequently sentenced for the original offence."

19. Special Procedure in Certain Cases.- Notwithstanding anything contained in rules 16, 17 and 18,

(i) where a penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge; or
(ii) where the disciplinary Authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said rules; or
(iii) where the Governor is satisfied that in the interest of the security of the State, it is not expedient to follow such procedure,

the disciplinary Authority may consider the circumstances of the case and pass such orders as it deems fit:

Provided that the Commission shall be consulted before

> passing such orders in any case in which such consultation is necessary.
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> Note.- If any question arises whether it is reasonably practicable to give any person an opportunity of showing cause under clause (2) of Article 311 of the Constitution, the decision thereon of the authority empowered to dismiss, or remove such person or to reduce him in rank, as the case may be, shall be subject to only one appeal to the next higher authority.

In the background of above legal provisions, what is significant to note is, that in the judgment Annexure-5, the learned trial court had found the petitioner guilty of the offence under Section 465 I.P.C. That finding of guilt has become final, and that is a fact, which is not in dispute. A look at the provisions of Section 4 of the Probation Act shows, that thereunder, the benefit is to be given, only when a person is found guilty of having committed offence. Then, according to Rule 19(1) of the Rules, notwithstanding anything contained in Rules 16, 17 and 18 a penalty can be imposed on a Government Servant on the ground of conduct which has led to his conviction on a criminal charge, if the disciplinary authority so thinks fit, after considering the circumstances of the case, where an action is intended to be taken under Rule 19, obviously, no further enquiry is contemplated. It is in this sequence, that the provisions of Section 12 of the Probation Act have their play, inasmuch as, according to this provision, which has a nonobstante clause, where a person found guilty of an offence, and dealt with under the provisions of Section 3

or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence, under such law.

Thus, a cumulative reading of these provisions do show, that the observations made in Annexure-5, on the anvil of Section 12 of the Probation Act, only have the effect of removing the disqualification, which is attached to the conviction, for the purpose of Rule 19 of the C.C.A. Rules, and thus, on account of the conviction, the employee cannot be dismissed straightway, and if he is intended to be punished, departmental enquiry will have to be held.

There is yet another aspect of the matter requiring to be considered, even for the purpose of considering the case on the anvil of the principle propounded by the learned counsel by referring to the judgement, in Bharat Gold Mine's case. In Bharat Gold Mine's case, the finding of the Criminal Court was, that no raid or recovery was proved to have been effected at the house of the accused, and therefore, he was acquitted, as against which, in the present case, the petitioner has been convicted by the criminal court.

In that view of the matter, in any case in view of the latest pronouncement of Hon'ble the Supreme Court, in P.C. Kakkar's case and Narender Singh's case, when even after acquittal by the Criminal Court, it is permissible to

proceed against the employee departmentally, I do not find any sufficient cause, to come to the conclusion, that the petitioner cannot be proceeded against departmentally, after he has been convicted, simply because, in Annexure-5 it has been observed, that the conviction will not effect adversely the government service by virtue of Section 12 of the Probation Act.

Thus, taken from any stand point I do not find any force in the writ petition. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/